15

JUL 26
CHARLES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 207

ANTON and IRENE SEDIVY, et al,
Petitioners,

vs.

SUPERIOR HOME BUILDERS, INC., PARK VIEW HOME BUILDERS, INC., THE TRUST COMPANY OF CHICAGO and SAM NAPSKY,
Respondents.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable
John P. Barnes,
Judge Presiding.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JAMES PAUL DELANEY,
30 North LaSalle Street,
Chicago 2, Illinois.
Attorney for Petitioners.

The Scheffer Press, Inc.—ANdover 3-6850

INDEX

	PAGE
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes and Regulations involved	2
Statement	2
Reasons for granting the writ	3
Conclusion	3
Appendix	1a
Statutes and Regulations:	
Act of March 22, 1944, 58 Stat, 118, 1 U.S.C. (Supp. 1) #109	5a
Housing and Rent Act of 1947, approved June 30, 1947, 61 Stat. 193, 50 U.S.C. App. (Supp 1) #1881:	
Sec. 1 (a)	5a
Veterans Emergency Housing Act of 1946, 60 Stat. 207, 50 U.S.C. App. #1821 et seq.	
Sec. 1 (b)	1a
Sec. 2 (b)	1a
Sec. 3 (a)	2a
Sec. 3 (b)	2a
Sec. 4 (a)	3a
Sec. 5	4a
Sec 7 (a)	4a
Sec. 7 (c)	4a
Priorities Regulation No. 33 of the Civilian Production Administration (11 F.R. 6598)	6a
Schedule A.	
Sec. 944.54 (e)	6a
Sec. 944.54 (g)	5a
Sec. 944.54 (g) (ii)	7a
Sec. 944.54 (g) (7)	7a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 10298

ANTON and IRENE SEDIVY, et al, Petitioners, vs. SUPERIOR HOME BUILDERS, INC., PARK VIEW HOME BUILDERS, INC., THE TRUST COMPANY OF CHICAGO and SAM NAPSKY, Respondents.	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division. — Honorable John P. Barnes, Judge Presiding.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Anton and Irene Sedivy, et al, petitioners herein, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on April 27th, 1951.

The Opinion Below.

The opinion of the United States Court of Appeals is fully set forth in the record (R. 5).

Jurisdiction.

The judgment of the Court of Appeals was entered on April 27th, 1951 (R. 6). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

Questions Presented.

1. Whether Section 1 (a) of the Housing and Rent Act of 1947, approved June 30, 1947, in repealing the Veterans' Emergency Housing Act of 1946, made unenforceable maximum sales prices and construction requirements, imposed or modified under the authority of the latter Act prior to its repeal, on houses in construction prior to June 30, 1947, but not sold until after this date.

2. Whether the Statute of Limitations contained in Section 7(D) of the Veterans' Emergency Housing Act of 1946, continued in full force and effect after the repeal of this Act itself, in the absence of any such express proviso in the repealing Housing and Rent Act of 1947.

Statutes and Regulations Involved.

The pertinent portions of the Veterans' Emergency Housing Act of 1946 (60 Stat. 207, 50 U.S.C. App. #1821 *et seq.*), of Section 1 (a) of the Housing and Rent Act of 1947 (61 Stat. 193, 50 U.S.C. App. (Supp. 1) #1881), of the Act of March 22, 1944 (58 Stat. 118, 1 U.S.C. (Supp. 1) #109) and of Priorities Regulation No. 33 of the Civilian Production Administration (11 F.R. 6598) are set forth in the Appendix, *infra,* pp. 1a-7a.

Statement.

The fundamental questions presented herein are also presented by United States of America, Petitioner, in the case now pending before this Court on certiorari granted on May 7th, 1951—71 S.C.T. 796.

Petitioners brought their suits, which were consolidated by the District Court on its own motion into one suit, to secure from respondents the amount of the overcharges made by the latter on the sale by them to the petitioners of some 37 houses constructed by the respondents under

priorities granted them pursuant to Priorities Regulation 33. The dates of sale, ceiling and sale prices on the respective properties, the purchasers' names and addresses are set forth in the complaints, together with the prayers for relief. To these complaints respondents filed motions to dismiss petitioners' actions, which motions the District Court allowed, and which dismissal the Court of Appeals for the Seventh Circuit upheld. (R. 6).

Reasons for Granting Writ.

Petitioners rely upon the same reasons for the granting of this writ as those advanced by the United States of America in the case of *United States of America, Petitioner* v. *Robert Fortier, et al,* 71 S. Ct. 796. It is, in the opinion of these petitioners, unnecessary to reiterate the matter so ably set forth in the Government's petition for certiorari in the *Fortier* case and it is their desire, with the Court's forbearance, to adopt as their own, under this heading, the Government's statements made in the *Fortier* case.

CONCLUSION.

For the reasons stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

JAMES PAUL DELANEY,
Attorney for Petitioners.

APPENDIX.

1. The perinent portions of the Veterans Emergency Housing Act of 1946 (60 Stat. 207, 50 U. S. C. App. § 1821 *et seq.*) provide as follows:

* * * * *

Section 1 (b):

The provisions of this Act, and all regulations and orders issued thereunder, shall terminate on December 31, 1947, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the provisions of the Act are no longer necessary to deal with the existing national emergency, whichever date is the earlier.

* * * * *

Section 2 (b):

The Housing Expediter, in addition to such other functions and powers as may be delegated to him by the President, is authorized to—

(1) formulate such plans and programs as are necessary to provide for an increased supply of housing accommodations of all kinds and, in particular, of homes available for sale or rental at moderate prices to veterans of World War II and their immediate families;

(2) issue such orders, regulations, or directives to other executive agencies (including the Office of Economic Stabilization and the Office of Price Administration) as may be necessary to provide for the exercise of their powers in a manner required by or consistent with the execution of the aforesaid plans and programs, and to coordinate the activities of such agencies directed to the execution of such plans and programs. Each executive agency shall carry out without delay the orders, regulations, or directives of the Housing Expediter, and shall, to the extent necessary,

modify its operations and procedures from time to time to conform to the directions of the Housing Expediter;

(3) recommend to the President the enactment of such legislation as may be necessary to provide the authority to carry out such plans and programs as are not authorized under existing law;

(4) consult and cooperate with other agencies of the Federal Government, State and local governments, industries, labor, and other groups, both national and local, with respect to the problems created by the housing emergency and the steps which can be taken to remedy it.

• • • • •

Section 3 (a):

Whenever in the judgment of the Expediter the sales prices of housing accommodations the construction of which is completed after the effective date of this Act have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish maximum sales prices for such housing accommodations in accordance with the provisions of this Act. • • •

Section 3 (b):

Any regulation or order issued under the authority of this section with respect to housing accommodations the construction of which is completed after the effective date of this Act shall provide that no sale of any such housing accommodations shall take place until after the builder thereof has filed with the appropriate agency designated by the Expediter a description of such accommodations, including a statement of the proposed maximum sales price, and has received from such agency a certification that such price is reasonably related to the value of the accommodations to be sold, taking into consideration (1) reasonable construction costs not in excess of the legal maximum prices of the materials and services required for the construction, (2) the fair market value

of the land (immediately prior to construction) and improvements sold with the housing accommodations, and (3) a margin of profit reflecting the generally prevailing profit margin upon comparable units during the calendar year 1941. Any prospective seller of such housing accommodations may apply for such certification at any time, including before the commencement of construction, during its progress, or after its completion. In any case where a certification of approval of a proposed maximum sales price has been issued prior to the completion of construction, the prospective seller may, at any time before the first sale, apply for such revision of the maximum sales price previously certified as may be justified by a showing of special circumstances arising during the course of construction and not reasonably to have been anticipated at the time of the issuance of the earlier certification. The first sale of housing accommodations the construction of which is completed after the effective date of this Act shall not be made at a price in excess of the maximum sales price certified under this subsection. The actual price at which any such housing accommodations is first sold, plus any increases authorized pursuant to subsection (c), shall be the maximum sales price for any subsequent sale of such housing accommodations

• • • • •

Section 4 (a):

Whenever in the judgment of the Expediter there is a shortage in the supply of any materials or of any facilities suitable for the construction and/or completion of housing accommodations in rural and urban areas, and for the construction and repair of essential farm buildings, he may by regulation or order allocate, or establish priorities for the delivery of, such materials or facilities in such manner, upon such conditions, and to such extent as he deems necessary and appropriate in the public interest and to effectuate the purposes of this Act.

• • • • •

Section 5:

It shall be unlawful for any person to effect, either as principal or broker, a sale of any housing accommodations at a price in excess of the maximum sales price applicable to such sale under the provisions of this Act, or to solicit or attempt, offer, or agree to make any such sale. It shall be unlawful for any person to violate the terms of any regulation or order issued under the provisions of this Act. Notwithstanding any termination of this Act as contemplated in section 1 (b) hereinabove, the provisions of this Act, and of all regulations and orders issued thereunder, shall be treated as remaining in force, as to rights or liabilities incurred or offenses committed prior to such termination date, for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

* * * * *

Section 7 (a):

Whenever in the judgment of the Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 5 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Expediter that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, may be granted and if granted shall be granted without bond.

* * * * *

Section 7 (c):

The district courts shall have jurisdiction of criminal proceedings for violations of section 5 of this Act, and, concurrently with State and Territorial courts, of all other proceedings under this section. Such criminal proceedings may be brought in any district in which any part of any act or transaction

constituting the violation occurred. Such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found. Any such court shall advance on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed against the Expediter or the United States Government in any proceeding under this Act.

* * * * *

2. Section 1 (a) of the Housing and Rent Act of 1947 (61 Stat. 193, 50 U. S. C. App. (Supp. I) § 1881) provides as follows:

Section 1 (a):

Sections 1, 2 (b) through 9, and sections 11 and 12, of Public Law 388, Seventy-ninth Congress, are hereby repealed, and any funds made available under said sections of said Act not expended or committed prior to the enactment of this Act are hereby returned to the Treasury: *Provided*, That any allocations made or committed, or priorities granted for the delivery, or any housing materials or facilities under any regulation or order issued under the authority contained in said Act, and before the date of enactment of this Act with respect to veterans of World War II, their immediate families, and others, shall remain in full force and effect.

* * * * *

3. The Act of March 22, 1944 (58 Stat. 118, 1 U. S. C. (Supp. I) § 109) provides as follows:

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prose-

cution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

4. Priorities Regulation No. 33 of the Civilian Production Administration (11 F. R. 6598) provides, in relevant part, as follows:

§ 944.54 (e)

Construction of the project. A builder who constructs, converts, alters or repairs housing accommodations under this regulation must do the work in accordance with the description given in the application, except where he has obtained written approval for a change from the agency which approved the original application.

* * * * *

§ 944.54 (g)

Maximum sales prices and rents—(1) *General.* The restrictions on sales prices and rents contained in this paragraph (g) must be observed so long as this regulation remains in effect. They apply to dwellings of the kinds described below when built or converted under this regulation. Approval of a proposed sales price or rent should be considered merely as a limit upon the price or rent to be charged. It should not be considered as a statement that the sales price or rent represents the value of the dwelling or the apartment for other purposes. In the case of remodelling or rehabilitation, the Office of Price Administration may reduce the maximum rent specified in the application, unless prior approval of the rent has been obtained from that agency.

* * * * *

§ 944.54 (g) (2) (ii)

A builder must not sell a one-family dwelling built or converted under this regulation, including the land and all improvements (including garage if provided), for more than the maximum sales price specified in the application, as approved, including within this sales price the amount of any brokerage fees or commissions paid in connection with the sale, whether paid by the builder or by the purchaser.

• • • • •

§ 944.54 (g) (7)

Requests for increases in sales prices and rents by builders. A builder may apply to the Federal Housing Administration for an increase in the sales price or rent specified in the application before the house is sold (i. e. before title has passed) or initially rented. The application will not be approved unless he can show that he has incurred or will incur additional or increased costs in the construction over which he had, or has, no control, or if he can show that he will incur additional or increased costs in the operation of rented accommodations over which he has no control, and that these increased or additional costs will make it impracticable for him to sell or rent at the price or rent specified in the application. No increase in sales price or rent will be granted in excess of the increase in construction cost, or a proper proportion of it, or the increase in operating cost, as the case may be. However, no increase in sales price to an amount more than $10,000 (or $17,000 in the case of a two-family dwelling) will be granted and no increase in shelter rent to more than $80 a month will be granted except on appeal where unusual hardship would result.

• • • • •

16

Office-Supreme Court
FILED
AUG 31 1951
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 207

ANTON and IRENE SEDIVY, et al.,
Petitioners,

vs.

SUPERIOR HOME BUILDERS, INC., PARK VIEW HOME BUILDERS, INC., THE TRUST COMPANY OF CHICAGO and SAM NAPSKY,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

ARTHUR R. SEELIG,
Attorney for Respondents,
11 South LaSalle Street,
Chicago 3, Illinois.

MORRIS D. SPIEGEL
RAYMOND I. SUEKOFF
ISADORE FISHMAN
Of Counsel

The Scheffer Press, Inc.—ANdover 3-6850

INDEX

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statute & Regulation Involved	2
Statement (Additional)	3
Reasons for not Granting Writ	5
I. The questions presented in the instant petition are not involved in the government's petition in the *Fortier* case	5
II. The decisions of the Court of Appeals and the District Court are correct based solely upon the failure to institute suit within one year from the date of sales	7
III. Under the facts in the instant case the petitioners are not entitled to restitution for sales occurring between June 30, 1947 and December 31, 1947 for the reason that the sales do not come within the savings clause of the Housing and Rent Act of 1947	11
Conclusion	13
Appendix	1a

CITATIONS

Cases:	
Adams v. Albany, 80F Supp. 876	9
Amos v. Carson, 180 Tenn. 393	9
The Harrisburg, 119 U.S. 199. 214	8
Midstate Horticultural Co., Inc. v. Pennsylvania Railroad Company, 320 U.S. 356	8

PAGE

Rheinberger v. Reiling, 89F. Supp. 598 11

United States v. American Trucking Associations, 310 U.S. 534 10

United States v. Fortier, 71 S. Ct. 796 2

Statutes and Regulations:

Housing and Rent Act of 1947, approved June 30, 1947, 61 Stat. 193, 50 U.S.C. App. (Supp. 1) #1881 et seq.
Sec. 1(a) 10, 3a
Sec. 4 (a)(5) 3, 12

Veterans Emergency Housing Act of 1946, 60 Stat. 207, 50 U.S.C. App. #1821 et seq.

Sec. 1 (b) 2, 4

Sec. 7 (a) 6

Sec. 7 (d) 2, 3, 6, 8, 9

Priorities Regulation 33 (11 F.R. 6598) 2

Sec. 944.54 (g)(1) 11

Revocation (13 F.R. 6) 11

Rules of Supreme Court of United States Rule 38 7

Miscellaneous

Letter dated June 2, 1950 from Ed Dupree, General Counsel for Office of Housing Expediter.. 10, 2a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 207

ANTON and IRENE SEDIVY, et al.,
Petitioners,

vs.

SUPERIOR HOME BUILDERS, INC., PARK VIEW HOME BUILDERS, INC., THE TRUST COMPANY OF CHICAGO and SAM NAPSKY,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

The opinion of the District Court for the Northern District of Illinois, Eastern Division, was not published but is set forth in the record (R. 26, 27). The opinion of the Court of Appeals for the Seventh Circuit (R. 47-54) is reported at 188 F. 2d 729.

JURISDICTION.

It is suggested that the Court refuse to assume jurisdiction for the reasons that the decision of the Courts below are correct, that they are not in conflict with any other decisions and there are no important questions of federal law.

QUESTIONS PRESENTED.

1. Whether the statutory right and remedy of private persons to restitution, created by Section 7 (d) of the Veterans Emergency Housing Act of 1946, may be maintained after repeal and termination of this statute, without being subject to the one year limitation period contained in Section 7 (d).

2. Whether the statutory right of restitution under Section 7 (d) of the Veterans Emergency Housing Act of 1946 and Priority Regulation 33 can be maintained on sales occurring:

a. Between the period of June 30, 1947 and December 31, 1947, the period after the repeal of the Veterans Emergency Housing Act but prior to the termination date set forth in the repealed statute.

b. After December 31, 1947, the date of termination expressed in Section 1 (b) of the Veterans Emergency Housing Act of 1946.

STATUTES AND REGULATIONS INVOLVED.

The petitioners omitted Section 7 (d) of the Veterans Emergency Housing Act of 1946 from their petition. This is a most important section since the petitioners' claims are predicated solely upon this section. The omission may be explained by the fact that the government in the *Fortier* case* also omitted this section. In the *Fortier*

---

* Petitioners have employed the novel method of adopting the reasons of the petitioner in the case of **United States of America, Petitioner v. Robert Fortier, et al.**, 71 S. Ct. 796 in lieu of presenting their own reasons and argument to support their particular state of facts.

case the one year limitation period was not in issue. Section 7 (d) reads as follows:

> "If any person selling housing accommodations violates a regulation or order prescribing a maximum selling price, the person who buys such housing accommodations may, within one year from the date of the occurrence of the violation, bring an action for the amount by which the consideration exceeded the maximum selling price, plus reasonable attorney's fees and costs as determined by the court." (60 Stat. 207, 50 U.S.C. App. #1827)

Further, there was omitted from the petition in the instant case and also in the government's petition in the *Fortier* case Section 4 (a) (5) of the Housing and Rent Act of 1947 (61 Stat. 193, 50 U.S.C. App. (Supp. 1) #1884) which provides as follows:

> "the Housing Expediter shall prescribe by regulations: (i) the manner in which such housing accommodations shall be publicly offered in good faith for sale or rental to veterans of World War II or their families in accordance with the provisions of this section, and (ii) exceptions to this section for hardship cases, including appropriate exceptions from the operation of paragraphs (3) and (4): Provided, That nothing contained in this Act shall affect or remove any veteran's preference requirements heretofore established under Public Law 388, Seventy-ninth Congress, and outstanding with respect to housing accommodations completed prior to the date of the enactment of this title."

ADDITIONAL STATEMENT.

Petitioners' brief statement coupled with their unusual method of wholly relying upon the statements and reasons of the government in the case of *United States of America, Petitioner* v. *Fortier,* 71 S. Ct. 796 compels the respondent to present the record more fully to this Court.

The petitioners, thirty-seven private individuals, alleged violations of the Veterans Emergency Housing Act of 1946 (R. 4-8, 10-13) and sought relief only by way of mandatory injunction to compel restitution and reasonable attorneys' fees (R. 8, 13).

The first of petitioners' two actions contained twenty-one claims and was commenced by the filing of a complaint on March 23, 1950 (R. 2). The sales complained of took place during the period between September 4, 1946 and January 7, 1949 (R. 4-8), all more than one year prior to the filing of the complaint.

The second complaint contained sixteen claims and was filed on May 1, 1950 (R. 8). The sales took place during the period between June 27, 1947 and March 29, 1949 (R. 10-13), also all more than one year prior to the filing of the complaint.

Section 1 (b) of the Veterans' Emergency Housing Act of 1946 provided for the termination of the entire act on December 31, 1947. However, prior to its termination date the statute was repealed on June 30, 1947 by the Housing and Rent Act of 1947.

The sales can be categorized with relation to the Veterans Emergency Housing Act of 1946 as follows:

1. Six sales occurred before June 30, 1947, the date of repeal of the Veterans Emergency Housing Act of 1946 by the Housing and Rent Act of 1947.

2. Nine sales occurred between June 30, 1947 and December 31, 1947, the latter date being the termination date set forth in Section 1 (b) of the Veterans Emergency Housing Act, had it not been repealed prior thereto.

3. Twenty-two sales occurred after December 31, 1947, the original date for termination as expressed in the Veterans Emergency Housing Act.

An analysis of the complaints reveal the following:

1. No dates are alleged as to when the priorities assistance was granted to the respondents (R. 3, 9).

2. No allegations are made as to whether the houses sold after June 30, 1947 were in construction or completed prior to June 30, 1947.

REASONS FOR NOT GRANTING THE WRIT.

I.

The Questions Presented in the Instant Petition Are Not Involved in the Government's Petition in the Fortier Case.

The petitioners in the instant case pose two questions and then state (p. 2): "The fundamental questions presented herein are also presented by" the government in the *Fortier* case. The petitioners rely upon the same reasons as those advanced by the government in the *Fortier* case and "adopt as their own" the government's statements made in that case.

This Court will immediately discern that the petitioners' statement as to the fundamental questions being the same in both cases is incorrect. For that reason no reliance can be placed on the petition in the *Fortier* case in the determination of the instant case. To illustrate:

1. The government in the *Fortier* case explicitly limited its question to sales occurring between June 30, 1947 and December 31, 1947. The petitioners, however, framed their question number 1, quoting the question *verbatim* from the *Fortier* petition except for the insertion of the words "or modified" and the substitution of the words "after this date" in lieu of "December 1947". By this substitution petitioners attempt to include the twenty-

two sales which occurred after December 31, 1947, the date upon which the Veterans Emergency Housing Act of 1946 would have expired, if not for its earlier repeal.

2. The second question posed by the petitioners which referred to Section 7 (d) of the Veterans Emergency Housing Act is not presented, discussed, mentioned nor even faintly referred to in the government's petition in the *Fortier* case.

3. In the *Fortier* case the government based its claim upon Section 7 (a) of the Veterans Emergency Housing Act which contained no limitation period within which to bring suit. It also provides for injunctive relief. Section 7 (a) has no application to suits by private individuals. In the instant case the petitioners, as private individuals, are compelled to rely solely upon Section 7 (d) of the Act which requires bringing suit within one year from the date of sale and does not provide for any injunctive relief.

4. In the *Fortier* case the petition (p. 5) states the date when the priorities assistance was granted. Furthermore, the government's petition, by the phrasing of its question, is concerned only with houses in construction prior to June 30, 1947 (p. 2). In the instant case the petitioners did not allege any of the following important dates: (1) the granting of priorities assistance; (2) commencement of construction; or (3) the completion of construction.

5. In the *Fortier* petition the government on page 7 of its petition emphasizes the fact that there are a great many suits pending on the issue therein presented which involve veterans. In the instant case there are no allegations whatsoever by the petitioners that they are veterans.

From the foregoing it is apparent that the reasons ad-

vanced by the government in the *Fortier* case cannot apply to the instant case. The petitioners' failure to state within the covers of their petition the reasons relied upon for the allowance of the writ is alone sufficient reason for this Court to deny the granting of the writ (Supreme Court Rule 38). The violation of this rule is especially flagrant when the facts and questions of law are so dissimilar as in the instant and *Fortier* cases.

II.

The Decisions of the Court of Appeals and the District Court Are Correct Based Solely Upon the Failure to Institute Suit Within One Year from the Date of Sales.

The District Court dismissed petitioners' complaints on the ground that the actions were not brought within one year from the date of sales (R. 27). The Court of Appeals affirmed the judgment for dismissal basing its decision in part on the one year limitation and in part on the ground that some of the claims were based on sales made after the repeal and termination of the Veterans Emergency Housing Act of 1946.

Assuming that the government's position in the *Fortier* case is correct in that sales made after June 30, 1947 but prior to December 31, 1947 are subject to the provisions of the Veterans Emergency Housing Act the petitioners are immediately confronted with the barrier of the one year limitation period within which to bring suit. This applies to all of their thirty-seven claims.

The petitioners are *not assisted* by government's petition in the *Fortier* case because that question is not presented there. The petitioners fail to cite a single authority or advance a single argument that the one year limitation should not apply to their claims.

Petitioners, however, questioned the application of the one year limitation period by merely posing the question. (p. 2 of petition—Question 2). This question was adequately answered by the Court of Appeals as follows:

> "It is true, as plaintiffs state, that the 1947 Act contains no limitation period, but that fact militates against plaintiffs' contention. Certainly there was no occasion to fix a limitation period on the exercise of a right which had been repealed. Plaintiffs' contention leads to the incongruous result that if the 1946 Act was still in effect, the limitation period which it contained would constitute a barrier to the instant suits but that such suits may be maintained under the 1947 Act because the latter contains no limitation period. Evidently Congress by the 1947 Act intended to restrict rather than expand the rights conferred by the 1946 Act." (R. 51)

The petitioners' rights, if any, were created by Section 7 (d) of the Veterans Emergency Housing Act. To this right there was attached the condition of a one year period within which to enforce it. The right accrued as of the date of sale which the petitioners have conceded in the Court of Appeals (R. 50).

The Supreme Court of the United States enunciated the above principle in the case of *The Harrisburg*, 1886, 119 U.S. 199, 214, where it was stated at page 214:

> "The statutes created a new legal liability, with the right to a suit for its enforcement, provided the suit is brought within 12 months and not otherwise. The time within which the suit must be brought operates as a limitation of the liability itself as created, **and not of the remedy alone.** It is a condition attached to the right to sue at all."

This principle was reaffirmed in the case of *Midstate Horticultural Co., Inc.* v. *Pennsylvania Railroad Company,*

1943, 320 U.S. 356, 364 wherein this court stated at p. 364 as follows:

> "The purport of decisions is that Congress intended, where the period has run, to put an end to the substantive claim and the corresponding liability. The cause of action, the very foundation for relief, is extinguished."

In *Adams* v. *Albany,* D.C., S.D. Cal., N.D. 80 F. Supp. 876, 880 the court construing Section 7 (d) of the Veterans Emergency Housing Act stated as follows:

> "But there is a more serious infirmity to the Complaint. We are dealing with a statute which creates liability. And a limitation in such statute *affects the right*".

In fact, the District Court in that case considered the expiration of the one year period as a jurisdictional infirmity and so stated at page 880:

> "And there is no jurisdiction to entertain the action after the expiration of the period within which it might have been brought. This, because we are dealing *with a statute of creation and not with a statute of limitation*".

In *Amos* v. *Carson,* 1948, 186 Tenn. 393, 398, 210 S.W. 677, 679, the Supreme Court of Tennessee refused recovery under the Veterans Emergency Housing Act because of the one year limitation period and at page 393 stated:

> "The statute was in force when the appellant purchased this property on October 5, 1946. The right of action thereunder dated from this date. Suit was filed herein on October 16, 1947 or more than one year after the cause of action accrued. This statute authorized a civil suit by buyers against sellers who violated maximum sale prices. It is the only statute or regulation we know of wherein such a suit is authorized.

> This statute which prescribes a right of action also prescribes a time within which this right may be exercised. That is, the buyer 'may within one year from the date of the occurrence of the violation bring an action * * *'. To say that the right 'may' be exercised within the prescribed time is to preclude the idea that it may be exercised at some later time".

Moreover, the government on pages 10 and 11 of its petition in the *Fortier* case stated that the interpretation of the Housing Expediter as the official charged with the administration of the housing program was entitled to great weight, citing *United States* v. *American Trucking Associations*, 310 U.S. 534. The Housing Expediter is also the official charged with the administration of the Veterans Emergency Housing Act.

The general counsel for the Housing Expediter and his chief legal officer stated that it is the opinion of the Office of Housing Expediter that the one year statute of limitations as contained in Section 7 (d) of the Veterans Emergency Housing Act would apply to suits by individuals for restitution of overcharges and is not affected by Section 1 (a) of the Housing and Rent Act of 1947.* If the government's petition in the *Fortier* case is to be given any consideration at all, it should be considered as adding great weight to the opinion of the General Counsel for the Office of Housing Expediter.

In addition, none of the cases cited by the government in the *Fortier* case are in conflict with the position of the respondents in the instant case with regard to the one year limitation period within which to sue; nor are there any other conflicting reported decisions. In fact, one of the

---

* Letter from Ed Dupree, General Counsel, Office of Housing Expediter dated June 2, 1950, which is set forth in Appendix infra pp. 2a and 3a.

cases cited by the government in the *Fortier* case, *Rheinberger* v. *Reiling*, D.C. Minn. 89 F. Supp. 598, explicitly based its decision upon the premise that suit was brought within the one year period.

III.

Under the Facts in the Instant Case the Petitioners Are Not Entitled to Restitution for Sales Occurring Between June 30, 1947 and December 31, 1947 for the Reason that these Sales Do Not Come Within the Savings Clause of the Housing and Rent Act of 1947.

The petitioners attempted to expand the question propounded by the government in its petition in the *Fortier* case so as to include as violations of the Act twenty-two sales made after December 31, 1947. No citation of authority is necessary other than the statute and the regulation to determine that sales made after the termination of Veterans Emergency Housing Act on December 31, 1947, (without reference to its repeal on June 30, 1947,) was not subject to maximum price restrictions. Section 944.54 (g)(1) of Priorities Regulation 33, the purported basis for petitioners' claims, states that "the restrictions on sales prices and rent contained in this paragraph (g) must be observed so long as this regulation remains in effect". The regulation was revoked by the Housing Expediter on December 31, 1947 (13 F.R. 6).

As to the nine sales occurring between June 30, 1947 and December 31, 1947 there is some area of resemblance to the facts in the *Fortier* case but only as to the dates. There is an important element missing from the instant case which was present in the *Fortier* case. There is no allegation in the instant case that the nine houses were in construction on or before June 30, 1947. This omission is

important since the government makes much of this point on pages 10 and 11 of its petition. On this important difference of the facts petitioners are not entitled to a writ of certiorari based upon the *Fortier* petition.

Respondents, without desiring to be drawn into controversy with the government in the *Fortier* case, point out that the government overlooked a very important section of the Housing and Rent Act of 1947 which repealed the Veterans Emergency Housing Act of 1946. Section 4 (a) (5) of the 1947 Act provided, in substance, that nothing contained in the Housing and Rent Act of 1947 should affect or remove any veteran's preference requirements theretofore established under the Veterans Emergency Housing Act and outstanding with respect to housing accommodations completed prior to the date of the enactment of the Housing and Rent Act.

The respondents submit that at the very least, in order to be subject to the requirements of the Veterans Emergency Housing Act the houses in question must have been completed before June 30, 1947 and not merely in the process of construction, and in addition the completed houses must have been sold before December 31, 1947. In the instant case, the plaintiffs failed to allege these facts and elected to stand on their complaints in the District Court, which complaints were substantially defective.

In construing the acts in question it should be remembered that at the time of the repealing act, it was then the policy of the Congress (the 80th) to remove all price restrictions and to restrict rather than expand regulation.

CONCLUSION.

In view of the foregoing reasons, it is respectfully suggested that this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

ARTHUR R. SEELIG,
Attorney for Respondents.
11 South LaSalle St.,
Chicago 3, Illinois.

MORRIS D. SPIEGEL,
RAYMOND I. SUEKOFF,
ISADORE FISHMAN,
Of Counsel.

APPENDIX.

1. Letter dated June 2, 1950 from Ed Dupree, General Counsel for Office of Housing Expediter.

COPY BOUND CLOS

OFFICE OF
THE HOUSING EXPEDITER
WASHINGTON 25, D. C.

JUN 2 1950

IN REPLY REFER TO
GC-4

Morris D. Spiegel, Esq.
10 South La Salle Street
Suite 1000
Chicago 3, Ill.

Dear Mr. Spiegel:

This is in reply to your letter of May 25, 1950 requesting copies of certain statutes and regulations of the priorities housing program and also presenting several questions based on these statutory and regulatory materials.

In response to your request, we are pleased to enclose Priorities Regulation 33, Housing Expediter Priorities Regulation 5 and the Housing Permit Regulation, together with amendments of these three Regulations. Also, there is enclosed a copy of the Veterans' Emergency Housing Act of 1946. Since we do not have available for distribution a copy of the Second War Powers Act, you are referred to the citation therefor, insofar as pertinent to the Priorities Regulations, namely, 50 U.S.C.A., Appendix Section 633.

Your first question asks whether an overceiling sale of a priorities house after the expiration of the Second War Powers Act but during the effective period of the Veterans' Emergency Housing Act is still actionable under the latter statute. If a priorities dwelling subject to a maximum sales price was completed after August 27, 1946, then the sale prior to January 1, 1948 at an overceiling price is presently actionable under the Veterans' Emergency Housing Act, except that the private action of a purchaser in such case would be subject to the defense of the one year limitation contained in Section 7(d) of the Act.

For your second question, you inquire whether the sale of a priorities assisted dwelling at a price in excess of the maximum sales price, which sale occurred during 1948, would constitute the basis of a suit by individuals under either the Second War Powers Act or the Veterans' Emergency Housing Act of 1946. The Priorities Regulations (P.R. 33 and HPR 5) with their restrictions on sales prices were revoked effective January 1, 1948. Therefore, sales in excess of maximum prices which occurred after the revocation date of these Regulations would not constitute actionable violations. However, it is also our opinion that if a contract for the sale of a priorities dwelling was entered into at an over-the-maximum-price prior to January 1, 1948, then such contract constitutes an actionable violation of the Priorities Regulations, even though the closing of the deal occurred on or after January 1, 1948.

SE IN CENTER

BEST COPY AVAILABLE

Finally, you asked whether the one year statute of limitations contained in the Veterans' Emergency Housing Act applies to suits by individuals despite the provisions of Section 1(a) of the Housing and Rent Act of 1947. It is our opinion that the one year statute of limitations as contained in Section 7(d) of the Veterans' Emergency Housing Act would apply to suits by individuals for restitution of overcharges and is not affected by Section 1(a) of the 1947 Act.

I trust that the above materials and information will be of assistance in the solution of your problem.

Sincerely yours,

ED DUPREE
General Counsel

Enclosures

BEST COPY AVAILABLE